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TO THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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OFFICE OF THE
EXECUTIVE SECRETARY

IN RE:

PETITION OF BEN LOMAND
COMMUNICATIONS, INC. FOR APPROVAL
TO ISSUE AND SELL UP TO AN ADDITIONAL
\$1,000,000 IN COMMON STOCK OF
BEN LOMAND COMMUNICATIONS, INC.)
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DOCKET NO. 00-00680

RESPONSE

Comes the Petitioner, Ben Lomand Communications, Inc. and responding to the questions set out in letter of David Waddell, Executive Secretary of the Tennessee Regulatory Authority, dated August 15, 2000, said questions having been asked by the Honorable Lynn Greer, Director, on behalf of the Authority at the hearing on the subject matter which was held on August 15, 2000, says:

Before answering or attempting to answer the inquiries contained in said letter, I, James W. Dempster, Attorney, am making the following preliminary statement on behalf of both my client, Ben Lomand Communications, Inc., and myself.

The answers contained hereafter are the answers of and on behalf of Ben Lomand Communications, Inc. only, and any statements contained herein are not the statements of any telephone cooperative in the state of Tennessee or in the United States of America, and in no way are any statements, comments, answers, etc. to be considered, presumed, or assumed to be statements or the policies of Ben Lomand Rural Telephone Cooperative, Inc., in particular, or any and all other telephone cooperatives in the state of Tennessee or nation generally. Neither Ben Lomand Communications, Inc. nor James W. Dempster, Attorney, have any authority, either expressed or implied, to speak on their behalf.

POSTED
8/29/00

Question 1. What is the public interest rationale for allowing a cooperative telephone company to enter a for-profit enterprise even though the cooperative will not allow or negotiate for interconnection with its network by qualified competitors?

Answer: To answer this question fully, the respondent feels that it is necessary to go into the history of telephone cooperatives, the underlying principles of cooperatives in general, a clarification and a limitation of the scope of the answer as to a particular jurisdiction. (Skip to the bottom of page 8 for final answer.)

Also, it will be necessary for the respondent to go into the distinctions between a nonprofit enterprise and a for-profit enterprise along with the laws that created the various business types of organizations, however, this complex question can be somewhat simplified in that it is limited to "a cooperative telephone company", and the respondent's answer will be confined to this particular enterprise; but first, the word "cooperative" as being used in this response is defined as follows:

Definition: A cooperative is an association which furnishes an economic service without entrepreneur profit and which is owned and controlled on a substantially equal basis by those for whom the association is rendering service.

In the definition, the words "entrepreneur profit" are being used in a true economic sense of a return for the speculative or risk element of an enterprise. In a cooperative, all the members assume, in a broad sense, the economic risk, and they contemplate no return for the undertaking of the risk. In cooperatives, there may be a return for the use of capital investment and even for the risk of loss, but there is not contemplation for an additional return on the capital based upon the potentialities or the actualities of successful operation. A well run and successful cooperative will have a "margin" but not "entrepreneur profit". The aims and goals of cooperative telephone companies throughout the United States were and are to provide modern, dependable,

areawide telephone and/or telecommunications service on the cooperative plan and at the lowest cost consistent with sound economy and good judgment.

The Tennessee Legislature in 1961, Tennessee Code Annotated 65-29-102 provided as follows: "Cooperative, nonprofit, membership corporations may be organized under this chapter for the purpose of furnishing telephone service in rural areas to the widest practical number of users of such service." Telephone service as defined in Tennessee Code Annotated 65-29-103 is as follows:

"Telephone service" means any communication service whereby communication through the use of electricity is the principal intended use thereof, and includes all telephone lines, facilities or systems used in the rendition of such service.

Before attempting to answer this question, it is necessary for the respondent to define certain words in Question 1. The words "public interest" are defined in Black's Law Dictionary, Fifth Edition as follows:

Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question.

So far as public interest is applicable to the telephone business or telephone service, I am using the definition of "telephone service" as set out in Title 7, USCS Section 924(a), a copy of which is attached to this response as Exhibit 1, and also as defined above. When reference is made in this response to "rural areas", the definition is as set out in Title 7, USCS Section 924(b), which is also a part of Exhibit 1 attached to this response.

The term "a for-profit enterprise" in a capitalistic country could mean any endeavor in which a person (in the broad legal sense) might enter. Various types of farming, including dairy business, the raising of cattle, wheat growers, etc., manufacturing of any type or description, whether it be textile, machinery, airplanes, or what have you would be for-profit enterprises. Using that definition, virtually every cooperative,

mutual, or membership corporation is engaged in a for-profit enterprise. In this response, Ben Lomand Communications, Inc. is referring to telephone services which are being furnished by a for-profit corporation, partnership, individual, or association where the sum remaining after the payment of all expenses is returned not necessarily to the user of the service but to those persons who have taken the financial risk to furnish the service. In most true cooperatives, the person who gets the service has to be a member of the cooperative, however, there are some cooperatives where the law permits, to a limited degree, for some persons to receive service who are not members. This is the case of the Tennessee Telephone Cooperative Act. Also, the Internal Revenue Code makes provisions for service to nonmembers on a limited basis. We are using, for this response, the verbiage of Tennessee Code Annotated 65-29-101, et seq.

The next phrase "qualified competitors" is so broad, it is impossible for the respondent to answer unless there are some specifics set out. This respondent, Ben Lomand Communications, Inc., itself is a for-profit enterprise as defined in this response, and without a definition of the words "qualified competitors", does not feel that it is in a position to respond to this portion of the question; however, James W. Dempster, Attorney, to whom this question was addressed initially, will, as an individual and not as a representative of any corporation or company, person, partnership, or otherwise, be held or be bound by the statements made.

In this response, when the words "qualified competitors" are used, we would have reference to a legal entity which shall include but not be limited to a for-profit corporation, a nonprofit corporation, a mutual association, a partnership, a limited liability partnership, a limited liability corporation, an individual, a governmental agency or enterprise, any of which have or are empowered and authorized by either state and/or federal laws, have met all of the criteria of state and/or federal laws and statutes, federal and state regulatory bodies, and/or empowering bodies in a territory or agency which is already furnishing telephone service in that particular area.

Now to get down to a blunt and concise answer to Question 1, it is the opinion of the respondent that the public interest as applied to telephone service is that type of service which will be made available to any and all persons for their use and benefit who might request the service and who are willing and agree to reasonable terms and conditions at a reasonable and affordable price irrespective of their economic standing or where they might live, whether it be in the coldest spot of North Dakota, the hottest spot in Florida or Arizona, the lowest point in California, or the highest point in the Rockies or Appalachians. The public interest is to have universal telephone service. That is the number one goal and public interest as established by the Congress of the United States and by the Legislature of the State of Tennessee, and, I might add, virtually every other state in the United States. Having attended several public hearings before the old Public Service Commission and now the Tennessee Regulatory Authority and having read innumerable orders, comments, and the like, I can say without a moments hesitation, that universal service is the objective of the Tennessee Regulatory Authority today. There may be good reason to allow a cooperative furnishing telephone service in the state of Tennessee to enter the assigned territory or allotted territory of another telephone entity, and the Tennessee Legislature has specifically provided and established that to be the policy where that territory does not have reasonably adequate telephone service available. TCA 65-29-102 is a double edged sword and is not discriminatory. If a telephone cooperative is not furnishing reasonably adequate telephone service in its area, another furnisher can come into that territory whether that furnisher be a for-profit corporation, an individual, a partnership, another cooperative, or other types of entity. The history behind this particular act is that state and federal governmental leaders came to the realization that during the era from about 1927 through 1933, the telephone communications system was not keeping up and was virtually nonexistent in some areas, especially in rural America, and in 1934, as history

reveals, the Communication Act of that year was adopted by the U.S. Congress. The implementation of the Act was put on the back burner during the World War II period.

After World War II, the companies in existence at that time were large commercial companies and/or small independents who expended most of their finances to upgrade their systems which had gone down due to a shortage of materials and supplies during World War II. The demands were so great on the companies, both large and small, of their already existing customers and the desire of the investors to put their resources in the most profitable areas along with the fact that some of the so called "mom and pop operations" could not obtain reasonable financing, that the most sparsely populated areas in rural communities and impoverished communities were not being furnished adequate service. Some have said that it appeared that private enterprise was going to take forever to get universal telephone service really started.

A federal governmental agency, commonly referred to as REA, which had been created to get electrical services to unserved areas and especially the rural areas, which through the cooperative type organization brought rural electrification to the rural areas during the period of 1935 through 1955. Even with the program on hold during the period of 1941 through 1945, a phenomenal job was done in furnishing farm families in rural areas, which in 1935 had only central station electric service on one out of every ten farms to the phenomenal area coverage growth of nine out of ten farms. This success prompted the U.S. Congress in, to wit, 1949 to expand the Rural Electrical Agency to include and authorize the making of low interest rate loans for telephone purposes to qualifying entities. This included but was not limited to telephone cooperatives, nonprofit corporations, for-profit corporations, certain commercial telephone companies, mutual telephone companies, individuals, and the like. It was and is a well-known economic fact that certain enterprises, in order to secure adequate financing to do the job in the public utility business or public utility type services, needed territorial protection to attract investor capital whether it be stockholders, lenders, or

individuals who want to establish their own system. With the creation of territorial limits and noncompetitive areas, history has shown that these businesses had to be regulated to protect the public interest, and in Tennessee, without regulation, whether it be by a governmental agency or by the people who are receiving the service themselves, we have a monopoly, which, under the Constitution of the State of Tennessee, is not permissible.

In 1961, all of these facts were known and were communicated to the Tennessee General Assembly and were taken into consideration when the "Telephone Cooperative Act" (TCA 65-29-101, et seq.) was enacted. In that same act, telephone cooperatives were given certain privileges or rights that a commercial for-profit corporation does not have. One of those is that a telephone cooperative comes under the jurisdiction of the Tennessee Regulatory Authority only for three specific purposes, namely:

- (1) the establishment of territorial boundaries
- (2) hearing and determining of disputes arising between one telephone cooperative and other telephone cooperatives and between telephone cooperatives and any other type of person, corporation, association, or partnership rendering telephone service relative to and concerning territorial disputes
- (3) the approval of sale and purchases of operating telephone properties

The rationale behind this particular section of the law is very simple--telephone cooperatives furnish service to their members and/or patrons, and the members elect the directors who select a general manager to run the day-to-day operations of the company. If the directors put a rate too high or too low, or do not give service as the members think they should, or operate the business in a manner against their interest, the membership can change the directors. Also, lending institutions, through bond resolutions and loan documents, have a regulatory control over certain phases of the cooperative's business. This is also true of for-profit corporations who obtain their funding through Rural Utilities Services (formerly REA).

Another advantage that Tennessee cooperatives have over for-profit corporations is that there are a few state taxes which we understand that cooperatives do not have to pay that commercial companies do have to pay, such as when a cooperative buys real property, it is exempt from the payment of the transfer tax, or if a cooperative borrows money from an agency of the U.S. Government, the cooperative does not have to pay that tax. This respondent, which is not a cooperative, as has been pointed out many times, is a for-profit corporation and pays the same taxes and is under the same jurisdiction of the TRA and other governmental agencies that other for-profit telephone companies are under, including Ardmore, CenturyTel of Adamsville, Citizens Communications, Concord Telephone Exchange, Tennessee Telephone Company, United Telephone Company, and all other local exchange carriers serving in the state of Tennessee other than BellSouth, which due to certain federal legislation and FCC regulations and court rulings may fall into an entirely different classification. Then, in addition, a cooperative has certain federal rights, exclusions, etc., if it complies with the regulations of the federal law and the criteria of the federal law which gives it exemption from federal income taxes on member related income. It is the general conception of the general populous that cooperatives get low interest rate loans from the federal government and that commercial companies or investor-owned companies do not. This is not true. If an investor-owned company meets the requirements of the Rural Utilities Service or the Telephone Bank, then that investor-owned company can obtain loans from these agencies at a comparable rate of a similar qualifying telephone cooperative.

In Tennessee, unless the telephone cooperative law is changed, cooperatives cannot enter into territory where reasonably adequate service is being furnished by another entity, and another entity cannot come into cooperative territory if reasonably adequate service is being furnished by the cooperative. In states where this is allowed, the rationale would be that since the general philosophy of telephone cooperatives is to give telephone services to any person within its territory at a reasonable rate, wherever

located, if reasonably justifiable, even though management knows it is a financially losing service, the membership as a whole will pick up the difference. It would, therefore, be in the public interest and in the furtherance of universal service, which is in the public interest, to allow a telephone cooperative to furnish certain lucrative territories as a competing local exchange carrier with an ILEC when the regulatory authority or the legislature, state or federal, has determined by adequate and legal laws that certain territory be protected, and that certain territory which does not meet certain criteria should not be protected.

In order to fully respond to this question, representatives of Ben Lomand Communications, Inc. contacted Ben Lomand Rural Telephone Cooperative, Inc. management as to the status of any negotiations involving interconnections between Citizens Telecommunications and Ben Lomand Rural Telephone Cooperative, Inc. Ben Lomand Communications, Inc. was informed that Ben Lomand Rural Telephone Cooperative, Inc. is currently involved in good-faith negotiations with Citizens Communications, Inc. for interconnection with Ben Lomand Rural Telephone Cooperative, Inc. These negotiations were commenced and are ongoing with the mutual understanding that the Tennessee Regulatory Authority will ultimately be required to determine the legality of Citizens Communications, Inc. providing service in Ben Lomand Rural Telephone Cooperative, Inc. 's service area and with the further understanding that these negotiations shall not become effective until the questions as to whether territory of a cooperative in Tennessee is protected by either the laws of the state of Tennessee, of the U. S. Government, and a firm decision has been handed down by the Tennessee Regulatory Authority and/or Tennessee state court of competent jurisdiction and/or federal court.

We are further informed that Ben Lomand Rural Telephone Cooperative, Inc. is negotiating in good faith but will not voluntarily enter into a territorial interconnection agreement until authorized by its directors and/or membership.

Question 2. What is the public interest rationale for a cooperative's for-profit affiliate selling its securities to the cooperative rather than selling securities on the open market?

Answer: According to information obtained by the respondent on inquiry regarding the costs to qualify with the Securities and Exchange Commission and state regulatory agencies where stock can be sold to the public, the minimum cost is \$300,000, and the average cost is \$500,000, and since this is a public utility type corporation where the user picks up the tab, it is certainly in the public interest not to sell a new issue of only \$1,000,000 on the public market when it could have been sold to the parent company without the \$300,000 to \$500,000 qualifying expense.

In addition, one of the purposes for forming the subsidiary, Ben Lomand Communications, Inc., was to provide good long distance telephone service to customers both inside and outside the Cooperative area. By selling BLC's securities to the parent company, Ben Lomand Rural Telephone Cooperative, Inc., rather than on the open market, the profits made by BLC will go back into the company to provide good quality service in this area, whereas, if the stock was sold on the open market, those profits would go to individual investors. More than likely, those individual investors would be more interested in their own personal financial gain than enhancing the quality of telephone service provided to Ben Lomand Communications, Inc.'s customers or Ben Lomand Rural Telephone Cooperative, Inc. members.

Question 3. Are any legal prohibitions of cross-subsidization violated by the proposed transaction?

Answer: To the best of the respondent's knowledge, we do not know of any legal prohibitions which would prohibit a parent company from purchasing stock in a subsidiary. According to Webster's II New Riverside University Dictionary, subsidize means "1. To support or assist with a subsidy. 2. To obtain the assistance of by granting a subsidy." Subsidy, in the same dictionary, is defined: "1. Financial

assistance granted by a government to an individual or a private business. 2. Financial assistance given by one person or government to another."

The drafter of this response has personal knowledge that the officers of Ben Lomand Rural Telephone Cooperative, Inc. and the officers of Ben Lomand Communications, Inc. have gone to great lengths to assure that there has been no cross-subsidization on the part of either company. There has been no intentional cross-subsidization, however, having observed how certain statutes and regulations have been interpreted, it becomes more and more difficult to make a positive statement without going into a full explanation, fully defining and analyzing each word. Ben Lomand Rural Telephone Cooperative, Inc. purchased and is the owner of stock in the Rural Telephone Bank. It is our opinion that this transaction could not be classified as cross-subsidization and the subject transaction should not be held to be cross-subsidization.

Question 4. Other things the same, compare Ben Lomand Communications, Inc.'s current ability to compete with its ability if it operated completely independently from Ben Lomand Rural Telephone Cooperative.

Answer: To answer this question fairly and honestly, this respondent would have to have a thorough explanation of what the inquirer meant by "operated completely independently from." In today's environment in the telecommunications industry and under current laws and regulations, both federal and state, no provider of telephone services can operate completely independently from other telephone service providers in its service area. Services such as EAS and toll cannot be completed on one company's network. A sharing of facilities is required to complete these calls. However, we will provide an answer based upon what the respondent thinks the questioner had in mind.

Ben Lomand Communications, Inc. has made virtually every effort to operate completely independent from Ben Lomand Rural Telephone Cooperative, Inc.; however, Ben Lomand Communications, Inc. has contracted with Ben Lomand Rural Telephone

Cooperative, Inc. for certain services and is also using the expertise of some of the staff and personnel of Ben Lomand Rural Telephone Cooperative, Inc., for which it is compensating the Cooperative. With the exception of the managerial skills, these same services are being furnished to other telephone companies at virtually the same price that is being paid by Ben Lomand Communications, Inc.. Ben Lomand Rural Telephone Cooperative, Inc. and its officers and directors have been extremely careful in setting the charges to Ben Lomand Communications, Inc. at a price that they would be willing to make these same services available to other providers. The directors were advised that even though the law as it currently stands gives telephone cooperatives an exclusive right of service in their service area, any services provided to other carriers outside the service area must be provided to any other provider at comparable rates. In an effort to further separate the two companies, Ben Lomand Communications, Inc. has established two business offices separate from Ben Lomand Rural Telephone Cooperative, Inc. with plans to open a third in the next 60 days. These locations are staffed with employees of Ben Lomand Communications, Inc. with operating costs being paid solely by Ben Lomand Communications, Inc.

Prior to Ben Lomand Communications, Inc. beginning operations as a CLEC, an independent consulting firm assisted in the development of a business plan independent of any parent operations. Analysis was made of investments, revenues, and operating expenses to determine if the plan was feasible. Current revenues and expenses are within the benchmarks of the business plan.

Given this explanation above, this respondent says that it does operate completely independent of Ben Lomand Rural Telephone Cooperative, Inc., and it certainly does think that it has the ability to compete.

Question 5. How will financing arrangements similar to the proposed transaction affect Ben Lomand Rural Telephone Cooperative, Inc.'s members prospectively, assuming similar transactions continue?

Answer: If the business plan which was developed by an independent consulting firm is correct and if a survey of potential customers is correct, the purchase of additional stock by the Cooperative in the subsidiary with a limited amount of investable funds should affect Ben Lomand Rural Telephone Cooperative, Inc.'s members prospectively in that the dividend derived would aid it, the Cooperative, in carrying out the purpose for which the Cooperative was established, namely, to give area coverage in remote areas (less sparsely populated areas) in the counties of Van Buren, Grundy, Warren, White, and portions of Cannon, Marion, DeKalb, Bedford, Rutherford, Franklin, Putnam, and Coffee. After the loan conditions of Ben Lomand Communications, Inc.'s lenders have been met and expenditures made to improve the services being rendered to its customers and to upgrade its system, a portion of its net profits would go to Ben Lomand Rural Telephone Cooperative, Inc. as a stockholder by way of dividends to be determined by Ben Lomand Communications, Inc.'s board of directors. It is the hope of the Ben Lomand Communications, Inc.'s board that it will be able to declare a better than average corporate dividend. This is a direct or would be a direct benefit, however, the potential and anticipated indirect benefits could far outweigh the direct benefits.

The board of directors of Ben Lomand Communications, Inc. has been fully informed by its legal counsel that both the parent company and the subsidiary must operate independently of each other and that there can be no cross-subsidization either way. An excessive purchase of stock by the Cooperative in its subsidiary must be carefully weighed to prevent an imbalance either by purchase of stock or by dividends which would be tantamount to a cross-subsidization.

Even though stock is authorized for sale by Ben Lomand Communications, Inc., the board of directors of Ben Lomand Rural Telephone Cooperative, Inc. are duly bound to review and probably will review the offering with respect to its impact on the Cooperative and will determine the value to the Cooperative, for example, a local presence for long distance service, that would be provided or enhanced by the purchase.

This stock issue would provide Ben Lomand Communications, Inc. with the capital to provide additional services to make its operations more viable.

Question 6. How do the operations of Ben Lomand Communications, Inc. affect improvements that have been or will be made to Ben Lomand Rural Telephone Cooperative, Inc.'s system?

Answer: The operations of Ben Lomand Communications, Inc.'s to date have not adversely affected the improvements of Ben Lomand Rural Telephone Cooperative, Inc.'s system. The level of investments and quality of service provided to members of Ben Lomand Rural Telephone Cooperative, Inc. have continued to increase since the establishment of Ben Lomand Communications, Inc. Also, the operations of Ben Lomand Communications, Inc. have secured certain revenues for Ben Lomand Rural Telephone Cooperative, Inc. that might otherwise have been lost, for example, billing and collecting. By providing billing and collecting services, Cooperative members receive a single bill that includes long distance services provided by a local carrier and the cooperative is compensated for providing the billing service. As to the future, it is the opinion of the officers and management of Ben Lomand Communications, Inc. that the only effect that this operation of Ben Lomand Communications, Inc. would have on the Cooperative system would be to aid and assist in spreading costs of new communication technologies over a larger number of potential users.

Respectfully submitted, this 28 day of August, 2000.

BEN LOMAND COMMUNICATIONS, INC.

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Loan policies of the Rural Telephone Bank of the Department of Agriculture, 7 CFR Part 1610.
 General information regarding the Rural Electrification Administration, 7 CFR Part 1700.
 Rural development under the Rural Electrification Administration, 7 CFR Part 1703.
 Pre-loan policies and procedures for insured electric loans, 7 CFR Part 1714.
 Post-loan policies and procedures for insured electric loans, 7 CFR Part 1721.
 Electric system planning and design policies and procedures, 7 CFR Part 1724.
 Electric system construction policies and procedures, 7 CFR Part 1726.
 Electric standards and specifications for materials and construction, 7 CFR Part 1728.
 Pre-loan policies and procedures common to guaranteed and insured telephone loans, 7 CFR Part 1737.
 Post-loan policies and procedures common to guaranteed and insured telephone loans, 7 CFR Part 1744.
 Telecommunications system construction policies and procedures, 7 CFR Part 1753.
 Telecommunications standards and specifications for materials, equipment, and construction, 7 CFR Part 1755.
 Accounting requirements for REA telephone borrowers, 7 CFR Part 1770.
 REA policy on audits of electric and telephone borrowers, 7 CFR Part 1773.
 Loan account computations, procedures, and policies for electric and telephone borrowers, 7 CFR Part 1785.
 Prepayment of REA guaranteed and insured loans to electric and telephone borrowers, 7 CFR Part 1786.
 REA fidelity and insurance requirements for electric and telephone borrowers, 7 CFR Part 1788.

§ 924. Definitions of telephone service and rural area

(a) As used in this title, the term "telephone service" shall be deemed to mean any communication service for the transmission or reception of voice, data, sounds, signals, pictures, writing, or signs of all kinds by wire, fiber, radio, light, or other visual or electromagnetic means, and shall include all telephone lines, facilities, or systems used in the rendition of such service; but shall not be deemed to mean message telegram service or community antenna television system services or facilities other than those intended exclusively for educational purposes, or radio broadcasting services or facilities within the meaning of section 3(o) of the Communications Act of 1934, as amended [47 USCS § 153(o)].

(b) As used in this title, the term "rural area" shall be deemed to mean any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of one thousand five hundred inhabitants. *Amended to 5,000*
 (May 20, 1936, ch 432, Title II, § 203, as added Oct. 28; 1949, ch 776, § 5, 63 Stat. 948; Oct. 23, 1962, P. L. 87-862, 76 Stat. 1140; Nov. 28, 1990, P. L. 101-624, Title XXIII, Subtitle F, Ch 2, § 2354, 104 Stat. 4039.)

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ment, expansion, construction, acquisition, and operation of telephone lines, facilities, or systems to furnish and improve telephone service in rural areas: *Provided, however,* That the Secretary, in making such loans, shall give preference to persons providing telephone service in rural areas, to public bodies now providing telephone service in rural areas, and to cooperative, nonprofit, limited dividend, or mutual associations: *And provided further,* That for a period of one year from and after the effective date of this title [enacted Oct. 28, 1949] applications for loans received by the Secretary from persons who on the effective date of this title [enacted Oct. 28, 1949] are engaged in the operation of existing telephone service in rural areas shall be considered and acted upon before action is taken upon any application received from any other person for any loan to finance the furnishing or improvement of telephone service to substantially the same subscribers. The Secretary in making such loans shall, insofar as possible, obtain assurance that the telephone service to be furnished or improved thereby will be made available to the widest practical number of rural users. When it is determined by the Secretary to be necessary in order to improve telephone service in rural areas, such loans may be made for the improvement, expansion, construction, acquisition, and operation of telephone lines, facilities, or systems without regard to their geographical location: The Secretary is further authorized and empowered to make loans for the purpose of refinancing outstanding indebtedness of persons furnishing telephone service in rural areas: *Provided,* That such refinancing shall be determined by the Secretary to be necessary in order to furnish and improve telephone service in rural areas: *And provided further,* That such refinancing shall constitute not more than 40 per centum of any loan made under this title. Loans under this section shall not be made unless the Secretary finds and certifies that in his judgment the security therefor is reasonably adequate and such loan will be repaid within the time agreed, nor shall such loan be made in any State which now has or may hereafter have a State regulatory body having authority to regulate telephone service and to require certificates of convenience and necessity to the applicant unless such certificate from such agency is first obtained. In a State in which there is no such agency or regulatory body legally authorized to issue such certificates to the applicant, no loan shall be made under this section unless the Secretary shall determine (and set forth his reasons therefor in writing) that no duplication of lines, facilities, or systems, providing reasonably adequate services will result therefrom. (As amended Oct. 13, 1994, P. L. 103-354, Title II, Subtitle C, § 235(a)(13), 108 Stat. 3221.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1994. Act Oct. 13, 1994 substituted "Secretary" for "Administrator" wherever appearing.

§ 924. Definitions of telephone service and rural area

- (a) [Unchanged]
- (b) As used in this title [7 USCS §§ 922 et seq.], the term "rural area" shall be deemed to mean any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 5,000 inhabitants. (As amended Nov. 1, 1993, P. L. 103-129, § 2(c)(5), 107 Stat. 1364.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1993. Act Nov. 1, 1993, in subsec. (b), substituted "5,000" for "one thousand five hundred".

§ 925. Loan feasibility

The Secretary and the Governor of the telephone bank may not, as a condition of making a telephone loan to an applicant therefor, require the applicant to—

- (1), (2) [Unchanged]

(As amended Oct. 13, 1994, P. L. 103-354, Title II, Subtitle C, § 235(a)(13), 108 Stat. 3221.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1994. Act Oct. 13, 1994, in the introductory matter, substituted "Secretary" for "Administrator".

§ 926. Certain rural development investments by qualified telephone borrowers not treated as dividends or distributions

- (a) In general. The Secretary and the Governor of the telephone bank shall not—
 - (1) [Unchanged]
 - (2) require a qualified telephone borrower to obtain the approval of the Secretary or the Governor of the telephone bank in order to make an investment described in paragraph (1).
- (b) [Unchanged]

(As amended Oct. 13, 1994, P. L. 103-354, Title II, Subtitle C, § 235(a)(13), 108 Stat. 3221.)

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(2) [Unchan

(3) all collec

judgments,

et seq. and

proceeds pr

Bank, which

(4)–(6) [Unc

(As amended C

1996, P. L.